
CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

Date of decision: 27/08/98

ORAL JUDGEMENT Per Bhatt,J.

Learned advocate Mr.Anandjiwala for the original accused has given an application under section 394 of the Code of Criminal Procedure, 1973 ('the Code') inter alia contending that on 17.6.1998, the original accused -appellant herein has passed away and, therefore, this conviction appeal shall stand abated.

For the following reasons, the application is required to be allowed and in the result, the appeal shall stand abated in terms of section 394 of the Code.

(i) The deceased-accused was convicted and sentenced to R.I. for ten years and fine of Rs. 1,00,000/and in default, to undergo S.I. for one year for the offence under section 15 of the NDPS Act, who has not paid the fine. Therefore, in terms of section 394 of the Code, the appeal ipso facto, as a matter of right, would not finally abate on the death of the appellant. as he was sentenced to fine also

;

(ii) However, prima facie, even if abatement is refused, the heirs and legal representatives have been shown to be extremely poor and prima facie no monetary benefit to them is apparently shown;

(iii) The questions involved are required to be examined in light of the facts and the report of the Forensic Science Laboratory which do not seem to be exhaustive and enumerative. Reliance placed by the learned advocate for the appellant on the Division Bench decision of this court in Hathi vs. State of Gujarat, 1993 (2) GLR 1743 requires further consideration in view of the definition clause defining 'opium poppy' and 'Posh Doda' etc. However, no useful purpose will be served by undergoing the exercise as prima facie, the deceased does not seem to have left

any monetary benefit for his heirs and legal representatives.

In the circumstances and keeping in mind the ultimate anxiety of the court to do justice in the matter and not to make academic inquiry or fishing exercise when the apparent result in practical terms appears to be abortive, leaving the question and the ratio propounded in the Division Bench decision in Hathi vs. State of Gujarat (supra) open, in other words, without expressing any view on the proposition propounded in the said decision.

In the result, this appeal shall stand abated under section 394 of the Code and accordingly, it stands disposed of.
